

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/01/2009 has been entered.

Response to Amendment

2. Applicant's amendment filed on 12/01/2009 has been entered. Claims 1, 14, 17, and 25 have been amended. No claims have been canceled. Claims 29-32 have been added. Claims 1, 3-6, 13-14, 16-32 are still pending in this application, with claims 1, 13, 17 and 25 being independent.

Response to Arguments

- Prior Art Rejections under 35 USC 103

Applicant's arguments, see Applicant's Remarks, filed 12/01/2009, with respect to claims 1, 3-6, 13-14 and 16-28 have been fully considered and are persuasive. The rejection of claims 1, 3-6, 13-14 and 16-28 has been withdrawn.

Claim Objections

3. **Claim 14** is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 16. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. **Claims 17-23, 25-28, 31-32** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. **Regarding claim 17**, the claim limitation(s) “means for querying, means for analyzing, and means for selecting” uses the phrase “means for” or “step for”, but it is modified by some structure, material, or acts recited in the claim. It is unclear whether the recited structure, material, or acts are sufficient for performing the claimed function which would preclude application of 35 U.S.C. 112, sixth paragraph, because the claim is modified by sufficient structure.

If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that the phrase “means for” or “step for”

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is clearly **not** modified by sufficient structure, material, or acts for performing the claimed function.

If applicant does **not** wish to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that it will clearly not be a means (or step) plus function limitation (e.g., deleting the phrase “means for” or “step for”).

Assuming Applicant intended to invoke 35 U.S.C. 112, sixth paragraph, it is unclear to one of ordinary skill in the art whether the recited structure, material, or acts in the claim are sufficient for performing the claimed function. Since the claims are directed to computer-implemented means plus function subject matter, merely referencing to a general purpose computer with appropriate programming without providing any detailed explanation of the appropriate programming, the written description of the specification discloses no corresponding algorithm or simply reciting software without providing some detail about the means to accomplish the function, would not be an adequate disclosure of the corresponding structure to satisfy the requirement of 35 U.S.C. 112, second paragraph, even when one of ordinary skill in the art is capable of writing the software to convert a general purpose computer to a special purpose computer to perform the claimed function.

7. **Claims 18-21** contain a similar issue as discussed for claim 17 above, thus, the dependent claims are rejected for the same reasons as set forth above for claim 17.

8. **Claims 22 and 31** are rejected based on the same reasoning provided in the rejection of claim 17 since claims 22 and 31 share the same claim limitations present in claim 17.

9. **Additionally, claim 23** shows the claim element “means for storing” which is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the

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written description fails to disclose the corresponding structure, material, or acts for the claimed function.

Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132(a)).

If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:

(a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or

(b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

10. **Claim 25** recites the limitation "a plurality of network elements" in line 5. It is not clear if the limitation the limitation "a plurality of network elements" in line 5 refers to the limitation

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"a plurality of network elements" in line 3. If they are related, the limitation the limitation "a plurality of network elements" in line 5 must be revised to "[[a]] the plurality of network elements". If they are not related, the limitations must be amended in a manner that distinguishes the limitations from each other.

However, in the examination of the claims, the Examiner has applied the interpretation that both limitations are related to each other.

11. **Claims 26-28 and 32** are rejected based on the same reasoning provided in the rejection of claim 25 since claims 26-28 and 32 share the same claim limitations present in claim 25.

Claim Rejections - 35 USC § 101

12. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

13. **Claim 25-28 and 32** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

14. **Independent claim 25** recites the limitation "a computer readable storage medium." The broadest reasonable interpretation of a claim drawn to a computer readable storage medium covers forms of: (i) non-transitory media/medium and (ii) transitory media/medium (i.e. propagating signals) per se in view of the ordinary and customary meaning of machine/computer-readable media/medium.

The specification does not show specific embodiments which cover the claim limitation "a computer-readable storage medium". Thus, under the broadest reasonable interpretation of the claim, the claim is directed to non-statutory subject matter.

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15. **Dependent claims 26-28 and 32** contain a similar issue as discussed for claim 25 above, thus, the dependent claims are rejected for the same reasons as set forth above for claim 25.

Allowable Subject Matter

16. **Claims 1-6, 13, 16, 24, 29-30** are allowed.

17. **Claim 14** would be allowable if rewritten or amended to overcome the objection(s) under 37 CFR 1.75, set forth in this Office action.

18. **Claim 17** would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

19. **Claims 18-23 and 31** would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

20. **Claim 25** would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph and under 35 U.S.C. 101, set forth in this Office action.

21. **Claims 26-28 and 32** would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph and under 35 U.S.C. 101, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REDENTOR M. PASIA whose telephone number is (571)272-9745. The examiner can normally be reached on M-Th 6am to 2pm EST and Fridays 6am-430pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Aung Moe can be reached on (571)272-7314. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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